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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053077
Party	Defendant Indochine Clothingworks
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Attachments	Answer to Indochine cancellation for filing 02072011.pdf (4 pages)(36957 bytes) Certificate of service Indochino cancellation.pdf (1 page)(12109 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Indochino Apparel Inc.

Petitioner,

v.

Indochine Clothingworks,

Respondent/Registrant.

Cancellation No. 92053077

Mark: INDOCHINE

Reg. #: 3,511,639

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO PETITION TO CANCEL

Indochine Clothingworks, a corporation organized under the laws of New York, having a principal place of business of 7 Park Ave., #166, New York, NY 10016, ("Registrant"), for its answer to the Petition for Cancellation filed by Indochino Apparel Inc., ("Petitioner") against the registration of Registrant's standard character trademark for INDOCHINE, Registration No. 3,511,639, filed on February 27, 2008, and published in the Official Gazette on July 22, 2008 (the "Registration"), pleads and avers as follows:

1. Answering the preamble to the Petition to Cancel on page 1 of the Petition to Cancel, Registrant is without information and belief sufficient to admit or deny the allegations concerning Petitioner's incorporation, business name or address and on this basis, denies these allegations. Registrant denies that Petitioner will be damaged by Registrant's registration

Number 3,511,639 for the mark INDOCHINE. Registrant admits that it is the current owner of Registration number 3,511,639.

2. Answering paragraph 1 of the Petition to Cancel, Registrant is without information or belief sufficient to admit or deny the allegations in paragraph 1 and on that basis denies each and every allegation therein.

3. Answering paragraph 2 of the Petition to Cancel, Registrant admits that the pleaded first use and first use in commerce dates in its Registration number 3,511,639 are both February 1, 2008. Registrant denies however that the earliest first use dates it can rely upon for purposes of priority is February 1, 2008 as the dates are pleaded in “at least as early as” format per USPTO rules. As such, Registrant reserves its right to establish an earlier first use and first use in commerce date than those pleaded in registration number 3,511,639.

4. Answering paragraph 3 of the Petition to Cancel, Registrant admits that Petitioner filed U.S. trademark serial number 77922986 for the mark INDOCHINO and submits that the information contained therein speaks for itself. Registrant admits that registration of serial number 77922986 has been refused by the USPTO based on Registrant’s prior INDOCHINE registration number 3,511,639.

5. Answering the incorrectly numbered/duplicate “paragraph 3” (sequentially paragraph 4) of the Petition to Cancel, Registrant is without information or belief sufficient to admit or deny the allegations in “paragraph 3” (sequentially paragraph #4) and on that basis denies each and every allegation therein.

Affirmative Defenses

In further answer to the Petition to Cancel, Registrant asserts as separate and affirmative defenses that:

1. The Petition to Cancel, and each paragraph thereof, taken individually or collectively, fails to state a basis for the relief sought.
2. Petitioner lacks standing to cancel the registration of Registrant's mark in that, on information and belief, Petitioner does not have rights, superior or otherwise, sufficient to support a likelihood of confusion claim.
3. Petitioner lacks standing to petition to cancel Registrant's mark in that Petitioner is not likely to be damaged or injured by Registrant's use and registration of the Registration.
4. Petitioner's claim is barred by the doctrine of waiver.
5. Petitioner's claim is barred by the doctrine of acquiescence.

WHEREFORE, Registrant prays for relief and that the Petition to Cancel be dismissed in its entirety and that Registrant's INDOCHINE trademark (Registration # 3,511,639) in International Class 25 remain active and in full legal force at the USPTO.

DATED this 7th day of February, 2011.

Respectfully submitted,

Indochine Clothingworks

By: 

Thomas P. Philbrick, Esq.

John E. Russell, Esq.

Attorneys for Registrant

Answer to Cancellation No. 92053077

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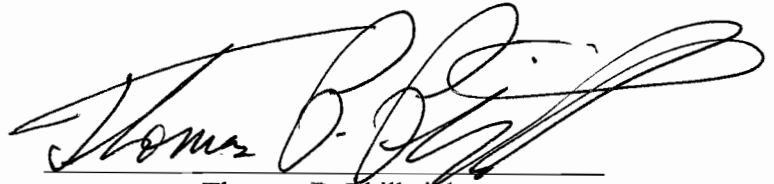
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Registrant's Answer to Petition to Cancel** was mailed on February 7, 2011, first-class postage prepaid, to counsel for Petitioner:

Davis Wright Tremaine LLP
Attn: Sheila Fox Morrison, Esq.
1300 SW 5th Avenue, Suite 2300
Portland, OR 97201

Date: _____

02/07/2011



Thomas P. Philbrick